

UTAH OPTOMETRY PRACTICE ACT

Part 1 - General Provisions

58-16a-101. Short title.

This chapter is known as the "Utah Optometry Practice Act".

58-16a-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.
- (2) "Contact lens" means any lens that:
 - (a) has a spherical, cylindrical, or prismatic power or curvature;
 - (b) is made pursuant to a current prescription; or
 - (c) is intended to be worn on the surface of the eye.
- (3) (a) "Contact lens prescription" means a written or verbal order for contact lenses that includes:
 - (i) the commencement date of the prescription;
 - (ii) the base curve, power, diameter, material or brand name, and expiration date;
 - (iii) for a written order, the signature of the prescribing optometrist or physician; and
 - (iv) for a verbal order, a record maintained by the recipient of:
 - (A) the name of the prescribing optometrist or physician; and
 - (B) the date when the prescription was issued or ordered.
- (b) A prescription may include:
 - (i) a limit on the quantity of lenses that may be ordered under the prescription if required for medical reasons documented in the patient's files; and
 - (ii) the expiration date of the prescription, which shall be two years from the commencement date, unless documented medical reasons require otherwise.
- (c) When a provider prescribes a private label contact lens for a patient the prescription shall include:
 - (i) the name of the manufacturer;
 - (ii) the trade name of the private label brand; and
 - (iii) if applicable, the trade name of the equivalent national brand.
- (4) "Contact lens prescription verification" means a written request from a person who sells or provides contact lenses that:
 - (a) is sent to the prescribing optometrist or physician; and
 - (b) seeks the confirmation of the accuracy of a patient's prescription.
- (5) "Eye and its adnexa" means the human eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lacrimal system.
- (6) "Fitting of a contact lens" means:
 - (a) the using of a keratometer to measure the human eye;
 - (b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
 - (c) trial fitting of contact lenses, which includes a period of time for evaluation for fit and performance, to determine a tentative contact lens prescription for a patient if the patient:
 - (i) has not worn contact lenses before; or
 - (ii) has changed to a different type or base curve.
- (7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized by means of laser or ionizing radiation.
- (8) "Ophthalmic lens" means any lens used to treat the eye and that:
 - (a) has a spherical, cylindrical, or prismatic power;
 - (b) is made pursuant to an unexpired prescription; and
 - (c) is intended to be used in eyeglasses or spectacles.
- (9) "Optometric assistant" means an unlicensed individual:

- (a) working under the direct and immediate supervision of a licensed optometrist; and
 - (b) engaged in specific tasks assigned by the licensed optometrist in accordance with the standards and ethics of the profession.
- (10) "Optometrist" or "optometric physician" means an individual licensed under this chapter.
- (11) "Optometry" and "practice of optometry" mean any one or any combination of the following practices:
 - (a) examination of the human eye and its adnexa to detect and diagnose defects or abnormal conditions;
 - (b) determination or modification of the accommodative or refractive state of the human eye or its range or power of vision by administration and prescription of pharmaceutical agents or the use of diagnostic instruments;
 - (c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its adnexa;
 - (d) display of any advertisement, circular, sign, or device offering to:
 - (i) examine the eyes;
 - (ii) fit glasses or contact lenses; or
 - (iii) adjust frames;
 - (e) removal of a foreign body from the eye or its adnexa, that is not deeper than the anterior 1/2 of the cornea;
 - (f) consultation regarding the eye and its adnexa with other appropriate health care providers, including referral to other appropriate health care providers; and
 - (g) a person, not licensed as an optometrist, directing a licensee under this chapter to withhold or alter the eye care services the licensee has ordered.
- (12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation of abnormal conditions or symptoms of the eye and its adnexa.
- (13) "Physician" has the same meaning as defined in Subsection 58-67-102(7).
- (14) "Prescription drug" has the same definition as in Section 58-17b-102.
- (15) "Unexpired" means a prescription that was issued:
 - (a) not more than two years prior to presentation of the prescription for an ophthalmic lens; or
 - (b) in accordance with Subsection (3) for a contact lens.

Part 2 - Board

58-16a-201. Creation of board - Board duties and functions.

- (1) There is created an Optometrist Licensing Board consisting of five optometrists and two members from the general public who do not provide eye care services.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) The board's duties and responsibilities shall be in accordance with Sections 58-1-202 and 58-1-203, and as provided under this Subsection (3).
- (4) The board shall designate one of its members on a permanent or rotating basis to:
 - (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (b) advise the division in its investigation of these complaints.
- (5) A board member who has, under Subsection (4), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint. The board member may be disqualified:

- (a) on his own motion, due to actual or perceived bias or lack of objectivity; or
- (b) upon challenge for cause raised on the record by any party to the adjudicative proceeding.

58-16a-104. Repealed.

58-16a-110. Repealed.

58-16a-111. Repealed.

Part 3 - Licensing

58-16a-301. Licensure required - License classifications.

- (1) A license is required to engage in the practice of optometry, except as specifically provided in Section 58-1-307 or 58-16a-305.
- (2) The division shall issue to a person who qualifies under this chapter a license in the classification of optometrist.

58-16a-302. Qualifications for licensure.

- (1) Each applicant for licensure as an optometrist shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee as determined by the division under Section 63J-1-303;
 - (c) be of good moral character;
 - (d)
 - (i) be a doctoral graduate of a recognized school of optometry accredited by:
 - (A) a regional accrediting body recognized by the Council on Post-Secondary Education; and
 - (B) the American Optometric Association's Council on Optometric Education; or
 - (ii) be a graduate of a school of optometry located outside the United States that meets the criteria that would qualify the school of accreditation under Subsection (d)(i), as demonstrated by the applicant for licensure;
 - (e) if the applicant graduated from a recognized school of optometry prior to July 1, 1996, have successfully completed a course of study satisfactory to the division, in consultation with the board, in general and ocular pharmacology and emergency medical care;
 - (f) have passed examinations approved by the division in consultation with the board that include:
 - (i) a standardized national optometry examination;
 - (ii) a standardized clinical examination;
 - (iii) a standardized national therapeutics examination; and
 - (iv) the Utah Optometry Law Examination; and
 - (g) meet with the board and representatives of the division, if requested by either party, for the purpose of evaluating the applicant's qualifications for licensure.
- (2) An applicant for licensure as an optometrist qualifying under the endorsement provision of Section 58-1-302 shall:
 - (a) be currently licensed in good standing in any state of the United States; and
 - (b) have been actively engaged in the legal practice of optometry for not less than 3,200 hours in the immediately preceding two years, in a manner that is consistent with the legal practice of optometry in this state.

58-16a-303. Term of license - Expiration - Renewal.

- (1)
 - (a) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule.
 - (b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
- (2) At the time of renewal the licensee shall show satisfactory evidence of completion of continuing education as required under Section 58-16a-304.
- (3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

58-16a-304. Continuing education.

- (1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by rule, complete 30 hours of qualified continuing professional education in accordance with standards defined by rule.
- (2) If a renewal period is extended or shortened under Section 58-16a-303, the continuing education hours for license renewal under this section shall be increased or decreased proportionally.

58-16a-305. License - Exemptions.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included in the definition of the practice of optometry subject to the stated circumstances and limitations without being licensed under this chapter:

- (1) a person who sells contact lenses on prescription provided by a person authorized under state law to practice either optometry or medicine and surgery if the person complies with Section 58-16a-801; and
- (2) a person who sells eyeglasses or spectacles as articles of merchandise or who fabricates them from a prescription if the person:
 - (a) does so in the ordinary course of trade from a permanently located and established place of business;
 - (b) does not traffic or attempt to traffic upon assumed skill in testing the eye and adapting lenses according to the test;
 - (c) does not duplicate, replace, or accept for replacement any ophthalmic lens, except in the case of an emergency;
 - (d) does not use in the testing of the eyes any lenses or instruments other than the lenses actually sold; and
 - (e) does not give or offer eyeglasses or spectacles as premiums as defined in Section 13-26-2; and
- (3) a person who fits contact lenses under the following conditions:
 - (a) he has a current certification from both the American Board of Opticianry and the National Contact Lens Examiners;
 - (b) he does not give or offer contact lenses as premiums;
 - (c) he does not perform a refraction, over-refraction, or attempt to traffic upon assumed skill in testing the eye;
 - (d) he operates in the ordinary course of trade from a permanently located and established place of business;
 - (e) he performs the work involved in fitting contact lenses himself and does not delegate the contact lens fitting to any other individual who is not qualified under this Subsection (3);
 - (f) he does not use in the testing of the eye any lenses or instruments other than the lenses he actually will sell;
 - (g) he provides services only to a patient who:
 - (i) presents an unexpired contact lens prescription; or

- (ii) has had an eye examination within the prior six months by an optometrist or ophthalmologist meeting the requirements under Section 58-16a-306;
- (h) he maintains a copy of the patient's contact lens prescription for not less than seven years;
- (i) he enters into a written agreement with an optometrist or an ophthalmologist before July 1, 2000, to fit contact lenses prescribed by that optometrist or ophthalmologist;
- (j) he fits contact lenses for at least two years under the direct supervision of the optometrist or ophthalmologist identified in Subsection (3)(i) before July 1, 2000, as documented in the written agreement; and
- (k) the optometrist or ophthalmologist described in Subsection (3)(i):
 - (i) ensures that the final contact lens is accurate;
 - (ii) presents a written copy of the prescription to the person fitting the contact lens; and
 - (iii) ensures that a copy of the prescription is provided to the patient, except as provided in Section 58-16a-306.

58-16a-306. Contact lens prescription - Qualifications.

- (1) An optometrist or physician issuing a contact lens prescription shall:
 - (a) be licensed under this title to practice in Utah;
 - (b) ensure the final contact lens prescription is accurate;
 - (c) present a written copy of the prescription to the patient after fitting; and
 - (d) provide a copy of the patient's contact lens prescription to a person who sells contact lenses upon the request of the patient or the person selling the contact lenses.
- (2) An optometrist or physician may not be held liable as a result of providing a prescription to a patient as required by Subsection (1).
- (3) Application of the provisions of this section shall be consistent with 45 C.F.R. Parts 160 and 164, Standards of Privacy of Individually Identifiable Health Information.

58-16a-307. Licenses held on effective date.

An individual holding a current license as an optometrist that was issued under any prior state law is considered to hold a current license in the same scope of practice under this chapter.

Part 4 - License Denial and Discipline

58-16a-401. Grounds for denial of license - Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Part 5 - Unlawful and Unprofessional Conduct - Penalties

58-16a-501. Unlawful conduct.

- "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:
- (1) buying, selling, or fraudulently obtaining, any optometry diploma, license, certificate, or registration;
 - (2) aiding or abetting the buying, selling, or fraudulently obtaining, of any optometry diploma, license, certificate, or registration;

- (3) selling or providing contact lenses in a manner inconsistent with Section 58-16a-801 or intentionally altering a prescription unless the person selling or providing the lenses is a licensed optometrist or ophthalmologist; or
- (4) representing oneself as or using the title of "optometrist," "optometric physician," "doctor of optometry," or "O.D.," unless currently licensed under this chapter.

58-16a-502. Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

- (1) using or employing the services of an optometric assistant to assist a licensee in any manner not in accordance with:
 - (a) the generally recognized practices and standards of ethics of the profession; or
 - (b) applicable state law or division rule;
- (2) failure to refer a patient to an appropriate licensed practitioner when:
 - (a) the patient's condition does not respond to treatment; or
 - (b) the treatment is not within the scope of competence or licensure of the licensee;
- (3) providing confidential information regarding a patient to any third party who does not have a legal and professional ground for obtaining the information;
- (4) knowingly prescribing, selling, giving away, or administering any prescription drug except for a legitimate medical purpose and upon a proper diagnosis indicating the use of the drug in the amount prescribed or provided;
- (5) giving or receiving directly or indirectly any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, except as part of a legal relationship within a lawful professional partnership, corporation, or association;
- (6) failure to transfer pertinent and necessary information from a patient's medical records to another optometrist or physician when so requested by the patient or his representative, as designated in writing; or
- (7) failure to provide a contact lens prescription to a person who sells contact lenses in accordance with Section 58-16a-306.

58-16a-503. Penalty for unlawful conduct.

- (1) Except as provided in Subsection (2), any person who violates the unlawful conduct provision defined in Section 58-16-501, Subsection 58-1-501(1)(a), or (1)(c) is guilty of a third degree felony.
- (2) A person who violates Subsection 58-16a-501(3) is guilty of a class C misdemeanor.

Part 6 - Scope of Practice

58-16a-601. Scope of practice.

- (1) An optometrist may:
 - (a) provide any optometric services not specifically prohibited under this chapter or division rules and that are within the optometrist's training, skills, and scope of competence; and
 - (b) prescribe or administer any pharmaceutical agent for the eye and its adnexa, including all oral pharmaceutical agents, except that:
 - (i) the oral antibiotics may only be prescribed for:
 - (A) eyelid-related ocular conditions or diseases; and
 - (B) any other ocular disease or condition as specified by division rule; and

- (ii) Schedule III controlled substances may only be prescribed or administered to be taken orally or topically for pain of the eye or adnexa in a quantity not to exceed 72 hours in duration and which may not be refilled.
- (2) An optometrist may not:
 - (a) perform surgery, including laser surgery; or
 - (b) prescribe or administer any Schedule II controlled substance as defined in Title 58, Chapter 37, Controlled Substances.
- (3) An optometrist is a health care provider for purposes of Sections 31A-22-617 and 31A-22-618.

Part 7 - Practice Standards

58-16a-701. Form of practice.

- (1) An optometrist licensed under this chapter may engage in practice as an optometrist or in the practice of optometry only as an individual licensee. However, as an individual licensee he may be:
 - (a) an individual operating as a business proprietor;
 - (b) an employee of another person or corporation;
 - (c) a partner in a lawfully organized partnership;
 - (d) a lawfully formed professional corporation;
 - (e) a lawfully organized limited liability company;
 - (f) a lawfully organized business corporation; or
 - (g) any other form of organization recognized by the state and which is not prohibited by division rule made in collaboration with the board.
- (2) Regardless of the form in which a licensee engages in the practice of optometry, the licensee may only permit the practice of optometry in that form of practice to be conducted by an individual:
 - (a) licensed in Utah as an optometrist under Section 58-16a-301; and
 - (b) who is able to lawfully and competently engage in the practice of optometry.

58-16a-702. Medical records - Electronic records.

- (1) Medical records maintained by a licensee shall meet the standards and ethics of the profession.
- (2) Medical records under this section may be maintained by any electronic means if the records comply with Subsection (1).

Part 8 - Contact Lens Seller

58-16a-801. Contact lens seller.

- (1) A person may sell or provide contact lenses if the person:
 - (a) does so in the ordinary course of trade from a permanently located and established place of business;
 - (b) does not perform refractions, over-refractions, or attempts to traffic upon assumed skill in testing the eye;
 - (c) provides all contact lenses consistent with and in accordance with a valid contact lens prescription;
 - (d) does not fit contact lenses;
 - (e) provides a contact lens to a patient after:
 - (i) receiving an unexpired verbal or written prescription; or
 - (ii) sending a contact lens prescription verification to the prescribing optometrist or physician, regardless of whether the prescribing optometrist or physician responds to or confirms the verification, provided that:
 - (A) the person has all of the information necessary to fill the prescription;

- (B) the prescribing optometrist or physician has not informed the person that the prescription has expired or is otherwise inaccurate prior to the person shipping or hand-delivering the contact lens to the patient;
 - (C) the person confirms a valid, unexpired contact lens prescription for the patient if the person is aware that the patient provided inaccurate prescription information in his last order; and
 - (D) the person informs the patient that the prescription has expired or that there is a medical problem associated with the prescription if the information is communicated by the prescribing optometrist or physician to the person within 72 hours of the contact lens prescription verification being sent; and
- (f) maintains patient information, including the method and date of any prescription verification, for no less than seven years.
- (2) Nothing in this section may be construed as requiring a person to be licensed or certified in any way under this or any other chapter of this title to sell contact lenses in accordance with Subsection (1).

Part 9 - Contact Lens Consumer Protection Act

58-16a-901. Title.

This part is known as the "Contact Lens Consumer Protection Act."

58-16a-902. Policy.

It is the policy of the state that citizens who wear contact lenses pursuant to valid prescriptions should not be unreasonably denied the opportunity to purchase their contact lenses from their retailer of choice.

58-16a-903. Definitions.

As used in this part:

- (1) "Alternative channels of distribution" means any mail order company, Internet retailer, pharmacy, buying club, department store, or mass merchandise outlet, without regard to whether it is associated with a prescriber, unless the account meets the definition of a competitor as provided for in this section.
- (2) "Competitor" means an entity that manufactures contact lenses and sells those lenses within the state in direct competition with any other manufacturer.
- (3) "Manufacturer" means a manufacturer, its parents, subsidiaries, affiliates, successors, and assigns.
- (4) "Prescriber" means an individual licensed or authorized to prescribe contact lenses under this title.

58-16a-904. Certification of availability of contact lenses - Exceptions.

- (1) Beginning July 1, 2006, a manufacturer of contact lenses doing business in the state shall certify by affidavit to the Attorney General those brands of contact lenses produced, marketed, distributed, or sold by the manufacturer in the state that are made available in a commercially reasonable and nondiscriminatory manner to:
 - (a) prescribers;
 - (b) entities associated with prescribers; and
 - (c) alternative channels of distribution.
- (2) Notwithstanding any other provision of law, a manufacturer shall only sell, market, or distribute lenses in Utah that have been certified under Subsection (1).
- (3) Subsections (1) and (2) do not apply to:
 - (a) rigid gas permeable lenses;

- (b) bitoric gas permeable lenses;
 - (c) bifocal gas permeable lenses;
 - (d) keratoconus lenses;
 - (e) custom soft toric lenses that are manufactured for an individual patient and are not mass marketed or mass produced; and
 - (f) custom designed lenses that are manufactured for an individual patient and are not mass marketed or mass produced.
- (4) Any time a brand ceases to be made available after July 1, 2006, the manufacturer shall immediately certify that fact by affidavit to the Attorney General.

58-16a-905. Manufacturers' conduct.

Nothing in Section 58-16a-904 is intended to require a manufacturer to:

- (1) sell to a competitor;
- (2) sell contact lenses to different contact lens distributors or customers at the same price;
- (3) open or maintain any account for a contact lens seller who is not in substantial compliance with Utah and federal law regarding the sale of contact lenses;
- (4) decide whether a low volume account with a contact lens seller is a direct account or handled through a distributor; or
- (5) sell to customers in all geographic area lenses that are being test marketed on a limited basis in one geographic area.

58-16a-906. Penalties for violations.

- (1) Knowingly and intentionally violating Section 58-16a-904 is a class A misdemeanor.
- (2) The attorney general may bring a civil action or seek an injunction and a civil penalty against a person, entity, or manufacturer who violates Section 58-16a-904.

UTAH OPTOMETRY PRACTICE ACT

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